

ASSEMBLY BILL

No. 800

Introduced by Assembly Member Kehoe

February 20, 2003

An act to amend Sections 1785.1, 1785.25, and 1785.31 of the Civil Code, relating to consumer credit.

LEGISLATIVE COUNSEL'S DIGEST

AB 800, as introduced, Kehoe. Consumer credit reporting agencies: inaccurate information.

The existing Consumer Credit Reporting Agencies Act regulates the activities of consumer credit reporting agencies and establishes requirements for furnishers of credit information. The act prohibits a person from furnishing information to a consumer credit reporting agency if the person knows or should know the information is incomplete or inaccurate. A furnisher of information to a consumer credit reporting agency is required to investigate disputed information upon notice from a consumer reporting agency, as specified. A furnisher of information is liable for failure to comply with these provisions unless it can show by a preponderance of the evidence that it had reasonable procedures in place to maintain compliance. The act provides that a person damaged by a negligent violation of the act may bring an action to recover actual damages, including court costs, loss of wages, attorney's fees, and when applicable, pain and suffering, and that a person damaged by a willful violation may additionally recover punitive damages and any other relief that the court deems proper.

This bill would permit a person to furnish information to a consumer credit reporting agency only if the person has reason to believe that information is accurate and complete. The bill would revise the process

of investigating disputed information by requiring a furnisher to correct any inaccurate information and to report any corrected information to a consumer credit reporting agency within a specified time. The bill would provide that confirming inaccurate information after an investigation is a violation of the act. The bill would provide that procedures to maintain compliance, as described above, are not reasonable if they permit the confirmation of inaccurate information, as specified. The bill would permit a court to award statutory damages of not less than \$2,500 to a person damaged by a negligent or willful violation of the act. The bill would also revise the statement of legislative findings.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1785.1 of the Civil Code is amended to
2 read:
3 1785.1. The Legislature finds and declares as follows:
4 (a) An elaborate mechanism has been developed for
5 investigating and evaluating the credit worthiness, credit standing,
6 credit capacity, and general reputation of consumers.
7 (b) Consumer credit reporting agencies have assumed a vital
8 role in assembling and evaluating consumer credit and other
9 information on consumers.
10 (c) There is a need to insure that consumer credit reporting
11 agencies exercise their grave responsibilities with fairness,
12 impartiality, and a respect for the consumer's right to privacy.
13 (d) It is the purpose of this title to require that consumer credit
14 reporting agencies adopt reasonable procedures for meeting the
15 needs of commerce for consumer credit, personnel, insurance,
16 hiring of a dwelling unit, and other information in a manner which
17 is fair and equitable to the consumer, with regard to the
18 confidentiality, accuracy, relevancy, and proper utilization of such
19 information in accordance with the requirements of this title.
20 (e) The Legislature hereby intends to regulate consumer credit
21 reporting agencies pursuant to this title in a manner which will best
22 protect the interests of the people of the State of California. *The*
23 *provisions of this title supplement the requirements of the Federal*
24 *Fair Credit Reporting Act (15 U.S.C. 1681 et. seq.) and provide*



1 *consumers with additional protections, including, but not limited*
2 *to, protection against the presence of erroneous information in*
3 *their consumer credit reporting files.*

4 (f) The extension of credit is a privilege and not a right. Nothing
5 in this title shall preclude a creditor from denying credit to any
6 applicant providing such denial is based on factors not inconsistent
7 with present law.

8 (g) Any clauses in contracts which prohibit any action required
9 by this title are not in the public interest and shall be considered
10 unenforceable. This shall not invalidate the other terms of such a
11 contract.

12 SEC. 2. Section 1785.25 of the Civil Code is amended to read:

13 1785.25. (a) ~~A person shall not furnish information on a~~
14 ~~specific transaction or experience to any consumer credit reporting~~
15 ~~agency if the person knows or should know the information is~~
16 ~~incomplete or inaccurate~~ *A person shall furnish information on a*
17 *specific transaction or experience to a consumer credit reporting*
18 *agency only if the person has reason to believe that information is*
19 *accurate and complete.*

20 (b) A person who (1) in the ordinary course of business
21 regularly and on a routine basis furnishes information to one or
22 more consumer credit reporting agencies about the person's own
23 transactions or experiences with one or more consumers and (2)
24 determines that information on a specific transaction or experience
25 so provided to a consumer credit reporting agency is not complete
26 or accurate, shall promptly notify the consumer credit reporting
27 agency of that determination and provide to the consumer credit
28 reporting agency any corrections to that information, or any
29 additional information, that is necessary to make the information
30 provided by the person to the consumer credit reporting agency
31 complete and accurate.

32 (c) So long as the completeness or accuracy of any information
33 on a specific transaction or experience furnished by any person to
34 a consumer credit reporting agency is subject to a continuing
35 dispute between the affected consumer and that person, the person
36 may not furnish the information to any consumer credit reporting
37 agency without also including a notice that the information is
38 disputed by the consumer.

39 (d) A person who regularly furnishes information to a
40 consumer credit reporting agency regarding a consumer who has

1 an open-end credit account with that person, and which is closed
2 by the consumer, shall notify the consumer credit reporting agency
3 of the closure of that account by the consumer, in the information
4 regularly furnished for the period in which the account is closed.

5 (e) A person who places a delinquent account for collection
6 (internally or by referral to a third party), charges the delinquent
7 account to profit or loss, or takes similar action, and subsequently
8 furnishes information to a credit reporting agency regarding that
9 action, shall include within the information furnished the
10 approximate commencement date of the delinquency which gave
11 rise to that action, unless that date was previously reported to the
12 credit reporting agency. Nothing in this provision shall require that
13 a delinquency must be reported to a credit reporting agency.

14 (f) (1) Upon receiving notice of a dispute noticed pursuant to
15 subdivision (a) of Section 1785.16 with regard to the completeness
16 or accuracy of any information provided to a consumer credit
17 reporting agency, the person that provided the information shall
18 ~~(1) complete an investigation with respect to the disputed~~
19 ~~information and report to the consumer credit reporting agency the~~
20 ~~results of that investigation~~ *do all of the following* before the end
21 of the 30-business-day period beginning on the date the consumer
22 credit reporting agency receives the notice of dispute from the
23 consumer in accordance with subdivision (a) of Section 1785.16
24 ~~and (2) review:~~

25 (A) *Review* relevant information submitted to it.

26 (B) *Complete an investigation with respect to the disputed*
27 *information.*

28 (C) *Correct any inaccurate information.*

29 (D) *Report to the consumer credit reporting agency the results*
30 *of the investigation and any corrected information.*

31 (2) *Confirming inaccurate information after an investigation is*
32 *a violation of this title.*

33 (g) A person who furnishes information to a consumer credit
34 reporting agency is liable for failure to comply with this section,
35 unless the furnisher establishes by a preponderance of the evidence
36 that, at the time of the failure to comply with this section, the
37 furnisher maintained reasonable procedures to comply with those
38 provisions. *Procedures are not reasonable if they permit*
39 *confirmation of information that is inaccurate, including, but not*
40 *limited to, procedures that permit confirmation of information*

1 *about a consumer without determining that information in fact*
2 *relates to that consumer.*

3 SEC. 3. Section 1785.31 of the Civil Code is amended to read:

4 1785.31. (a) Any consumer who suffers damages as a result
5 of a violation of this title by any person may bring an action in a
6 court of appropriate jurisdiction against that person to recover the
7 following:

8 (1) In the case of a negligent violation, actual damages,
9 ~~including~~ *statutory damages of not less than two thousand five*
10 *hundred dollars (\$2,500),* court costs, loss of wages, attorney's
11 fees and, when applicable, pain and suffering.

12 (2) In the case of a willful violation:

13 (A) ~~Actual damages~~ *Damages* as set forth in paragraph (1)
14 above.

15 (B) Punitive damages of not less than one hundred dollars
16 (\$100) nor more than five thousand dollars (\$5,000) for each
17 violation as the court deems proper.

18 (C) Any other relief that the court deems proper.

19 (3) In the case of liability of a natural person for obtaining a
20 consumer credit report under false pretenses or knowingly without
21 a permissible purpose, an award of actual damages pursuant to
22 paragraph (1) or subparagraph (A) of paragraph (2) shall be in an
23 amount of not less than two thousand five hundred dollars
24 (\$2,500).

25 (b) Injunctive relief shall be available to any consumer
26 aggrieved by a violation or a threatened violation of this title
27 whether or not the consumer seeks any other remedy under this
28 section.

29 (c) Notwithstanding any other provision of this section, any
30 person who willfully violates any requirement imposed under this
31 title may be liable for punitive damages in the case of a class action,
32 in an amount that the court may allow. In determining the amount
33 of award in any class action, the court shall consider among
34 relevant factors the amount of any actual damages awarded, the
35 frequency of the violations, the resources of the violator and the
36 number of persons adversely affected.

37 (d) Except as provided in subdivision (e), the prevailing
38 plaintiffs in any action commenced under this section shall be
39 entitled to recover court costs and reasonable attorney's fees.

1 (e) If a plaintiff brings an action pursuant to this section against
2 a debt collector, as defined in subdivision (c) of Section 1788.2,
3 and the basis for the action is related to the collection of a debt,
4 whether issues relating to the debt collection are raised in the same
5 or another proceeding, the debt collector shall be entitled to
6 recover reasonable attorney's fees upon a finding by the court that
7 the action was not brought in good faith.

8 (f) If a plaintiff only seeks and obtains injunctive relief to
9 compel compliance with this title, court costs and attorney's fees
10 shall be awarded pursuant to Section 1021.5 of the Code of Civil
11 Procedure.

12 (g) Nothing in this section is intended to affect remedies
13 available under Section 128.5 of the Code of Civil Procedure.

